SUPREME COURT, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 406.

McCULLOUGH TOOL COMPANY,

Petitioner,

vs.

WELL SURVEYS, INC. (now by change of name DRESSER SIE, INC.) and DRESSER INDUSTRIES, INC.,

Respondents.

McCULLOUGH TOOL COMPANY,

Petitioner,

vs.

DRESSER INDUSTRIES, INC.,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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We file this Supplemental Brief to correct erroneous statements in Petitioner's Reply Brief as to the decision of the trial judge.

On page 6 of its Reply Brief Petitioner states that the trial court acknowledged that Petitioner's altered apparatus included "five changes," but that the court then ignored the claims of the patent and found that "irrespective of these changes there was no infringement." The word "no" is clearly in error, or Petitioner would find nothing to complain of. The rest of the statement is also incorrect.

Far from acknowledging "five changes," the trial court found that three of the alleged changes involved absolutely no change from the original apparatus already

found to infringe. As to the other two "changes," the trial court specifically referred to the claims of the patent and found the modified structure within these claims. What the court decided was:

> "The first two changes are that both signals are not fed into a common amplifier and the combined signals then introduced to the conductor leading to the surface. As I read claims one, two, five and six, the language thereof does not limit the Swift device to the use of a common amplifier."
>
> "In claimed changes three, four and five, McCullough contends its new apparatus differs from the Swift in that the two signals are independent of, and have no effect on, each other, and that the casing collar locator does not interrupt any signal of radioactivity. These differences were features of the original McCullough apparatus, and were found by the trial court not to be distinguishing features from the Swift claims." R. 4952-3, printed in Appendix A to Brief of Respondents, pp. 22-23.

Thereafter, the trial court referred to the injunction and found that the new McCullough device was but a "colorable variation," i.e., not substantially different, and was within the terms of the injunction.

Respectfully submitted,

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